# FAX COVER SHEET


## Aldosoft

569 Haight Street, San Francisco, CA 94117
**Work Voice:**
**Fax:** (415) 861-5758
**Home Voice:** (415) 861-5758


**To:** Department of Justice

**Company:**

**Fax:** 1, 202-307-1454

**Work Voice:**

**Home Voice:**

**From:** Michael Alderete

**Date:** January 28, 2002

**Time:** 8:02 am

**Number of pages, including cover:** 4

**Notes:**
My comments on the proposed settlement of the Microsoft anti-trust trial, exercised under the Tunney Act.

January 27, 2002

Antitrust Division
U.S. Dept. of Justice
601 D Street NW, Suite 1200
Washington D.C., 20530-001

To Whom It May Concern:

I am writing to exercise my right under the Tunney Act to voice my strong disapproval of the current proposed settlement of the Microsoft anti-trust trial. The proposed settlement is both weak and lacking strong enforcement provisions, and is likely to have zero (or worse) effect on competition within the computer industry, with continued and increased harm to consumers in the form of fewer options in the software market and continued increases in the price of the Microsoft software consumers are forced to buy.

Microsoft was convicted of abuse of monopoly power by one Federal judge, and the judgment was largely upheld by another seven Federal justices. In evaluating any proposed settlement, keep repeating one Important Phrase over and over: **"Microsoft is guilty."**

The seven justices of the appeals court ruled that any actions taken against Microsoft (a) must restore competition to the affected market, (b) must deprive Microsoft of the "fruits of its illegal conduct," and (c) must prevent Microsoft from engaging in similar tactics in the future. The proposed settlement fails on every one of these.

**A) Restore Competition**

Among the many flaws in the proposed settlement is the complete disregard for the Open Source software movement, which poses the single greatest competitive threat to Microsoft's monopoly. Most organizations writing Open Source software are not-for-profit groups, many without a formal organization status at all. Section III(J)(2) contains strong language against non-for-profits, to say nothing of the even less-formal groups of people working on projects. Section III(D) also contains provisions which exclude all but commercially-oriented concerns.

To restore competition the settlement must make allowances for Open Source organizations — whether formal not-for-profit organizations or informal, loosely associated groups of developers — to gain access to the same information and privileges afforded commercial concerns.

### B) Deprivation of Ill-Gotten Gains

Nowhere in the proposed settlement is there any provision to deprive Microsoft of the gains deriving from their illegal conduct. Go back to the Important Phrase: "Microsoft is guilty." In most systems of justice, *we punish the guilty*. But the current proposal offers nothing in the way of punishment, only changes in future behavior.

Currently Microsoft has cash holdings in excess of US$40 billion, and increases that by more than US$1 billion each month. A monetary fine large enough to have an impact on them would be a minimum of US$5 billion.

Even a fine that large would be a minimal punishment. Microsoft's cash stockpile is used, frequently and repeatedly, to bludgeon competitors, buy or force their way into new markets, or simply purchase customers, with the long-term intent to lock people and organizations into proprietary software on which they can set the price. Taking a "mere" US$5 billion from their stockpile will have zero effect on this practice.

For that reason, Microsoft's cash stockpile must be further reduced. In addition to the monetary fine, Microsoft should be forced to pay shareholders a cash dividend in any quarter in which they post a profit and hold cash reserves in excess of US$10 billion. The dividend should be substantial enough to lower Microsoft's cash holdings by US$1 billion, or 10%, whichever is greater.

### C) Prevention of Future Illegal Conduct

The current proposed settlement allows Microsoft to effectively choose two of the three individuals who would provide oversight of Microsoft's conduct and resolve disputes. The proposed settlement also requires the committee to work in secret, and individuals serving on the committee would be barred from making public or testifying about anything they learn.

This structure virtually guarantees that Microsoft will be "overseen" by a do-nothing committee with virtually zero desire or ability to either correct Microsoft abuses, or even call attention to them.

Instead of the current proposal, a five-person committee should be selected. Microsoft may appoint one person, but will have no influence over any of the other four. For the four, two should be appointed by the Federal court of jurisdiction, one should be appointed by the U.S. Department of Justice, and one should be appointed by the U.S. Senate. At least two of the appointees should have technical experience and be

competent to evaluate technical proposals and arguments *by themselves*, without the filters which assistants would bring.

These are hardly the only thoughtful and reasonable suggestions you will no doubt receive regarding the proposed settlement of this anti-trust case. And these are hardly the only suggestions which should be adopted if the settlement is to prove effective. But all of them are essential to that aim, and adopt them you must.

Thank you for your time and the opportunity to comment.

Respectfully,

Michael A. Alderete
569 Haight Street
San Francisco, CA 94117
(415) 861-5758
michael@alderete.com